

Assembly Bill No. 781

Passed the Assembly September 9, 2013

Chief Clerk of the Assembly

Passed the Senate September 6, 2013

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2013, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Sections 7153.6 and 55363.5 to the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 781, Bocanegra. Sales and use taxes: fees: administration: violations for noncompliance: sales suppression devices.

Existing law requires the payment of sales and use taxes, and specified taxes, fees, and surcharges that are administered by the State Board of Equalization under the provisions of the Sales and Use Tax Law and the Fee Collection Procedures Law, respectively.

This bill would, under those laws, provide that a person who purchases, installs, or uses in this state any automated sales suppression device or zapper or phantom-ware with the intent to defeat or evade the determination of an amount due or collected pursuant to those laws is guilty of a misdemeanor, and would provide that any person who, for commercial gain, sells, purchases, installs, transfers, or possesses in this state any automated sales suppression device or zapper or phantom-ware with the knowledge that the sole purpose of the device is to defeat or evade the determination of an amount due or collected is guilty of an offense punishable by a fine, imprisonment, or both, as specified. This bill would also provide that the person is liable for all taxes, interest, and penalties due as the result of the use of an automated sales suppression device or zapper or phantom-ware. By creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 7153.6 is added to the Revenue and Taxation Code, to read:

7153.6. (a) Notwithstanding any other provision of this part, any person who purchases, installs, or uses in this state any automated sales suppression device or zapper or phantom-ware with the intent to defeat or evade the determination of an amount due pursuant to this part is guilty of a misdemeanor.

(b) (1) Any person who, for commercial gain, sells, purchases, installs, transfers, or possesses in this state any automated sales suppression device or zapper or phantom-ware with the knowledge that the sole purpose of the device is to defeat or evade the determination of an amount due pursuant to this part is guilty of an offense punishable by a fine as specified in paragraph (2), by imprisonment in a county jail for not more than one year, or, pursuant to subdivision (h) of Section 1170 of the Penal Code, for 16 months, or two or three years, or by both that fine and imprisonment. In addition, any person who uses an automated sales suppression device or zapper or phantom-ware shall be liable for all taxes, interest, and penalties due as a result of the use of that device.

(2) (A) Where a person is guilty of the offense described in paragraph (1) and the person sold, installed, transferred, or possessed three or fewer automated sales suppression devices or zappers or phantom-ware, that person shall be guilty of an offense punishable by a fine of not more than five thousand dollars (\$5,000).

(B) Where a person is guilty of the offense described in paragraph (1) and the person sold, installed, transferred, or possessed more than three automated sales suppression devices or zappers or phantom-ware, that person shall be guilty of an offense punishable by a fine of not more than ten thousand dollars (\$10,000).

(3) This subdivision shall not apply to a person that is a corporation that possesses any automated sales suppression device or zapper or phantom-ware for the sole purpose of developing hardware or software to combat the evasion of taxes by use of automated sales suppression devices or zappers or phantom-ware.

(c) For purposes of this section:

(1) “Automated sales suppression device” or “zapper” means a software program carried on a memory stick or removable compact disc, accessed through an Internet link, or accessed through any other means, that falsifies the electronic records of

electronic cash registers and other point-of-sale systems, including, but not limited to, transaction data and transaction reports.

(2) “Electronic cash register” means a device that keeps a register or supporting documents through the means of an electronic device or computer system designed to record transaction data for the purpose of computing, compiling, or processing retail sales transaction data in whatever manner.

(3) “Phantom-ware” means a hidden, preinstalled, or installed at a later time programming option embedded in the operating system of an electronic cash register or hardwired into the electronic cash register that can be used to create a virtual second till or may eliminate or manipulate transaction records that may or may not be preserved in digital formats to represent the true or manipulated record of transactions in the electronic cash register.

(4) “Transaction data” includes information regarding items purchased by a customer, the price for each item, a taxability determination for each item, a segregated tax amount for each of the taxed items, the amount of cash or credit tendered, the net amount returned to the customer in change, the date and time of the purchase, the name, address, and identification number of the vendor, and the receipt or invoice number of the transaction.

(d) This section shall not preclude prosecution under any other law.

SEC. 2. Section 55363.5 is added to the Revenue and Taxation Code, to read:

55363.5. (a) Notwithstanding any other provision of this part, any person who purchases, installs, or uses in this state any automated sales suppression device or zapper or phantom-ware with the intent to defeat or evade the determination of an amount collected pursuant to this part is guilty of a misdemeanor.

(b) (1) Any person who, for commercial gain, sells, purchases, installs, transfers, or possesses in this state any automated sales suppression device or zapper or phantom-ware with the knowledge that the sole purpose of the device is to defeat or evade the determination of an amount collected pursuant to this part is guilty of an offense punishable by a fine as specified in paragraph (2), by imprisonment in a county jail for not more than one year, or, pursuant to subdivision (h) of Section 1170 of the Penal Code, for 16 months, or two or three years, or by both that fine and imprisonment. In addition, any person who uses an automated

sales suppression device or zapper or phantom-ware shall be liable for all taxes, interest, and penalties due as a result of the use of that device.

(2) (A) Where a person is guilty of the offense described in paragraph (1) and the person sold, installed, transferred, or possessed three or fewer automated sales suppression devices or zappers or phantom-ware, that person shall be guilty of an offense punishable by a fine of not more than five thousand dollars (\$5,000).

(B) Where a person is guilty of the offense described in paragraph (1) and the person sold, installed, transferred, or possessed more than three automated sales suppression devices or zappers or phantom-ware, that person shall be guilty of an offense punishable by a fine of not more than ten thousand dollars (\$10,000).

(3) This subdivision shall not apply to a person that is a corporation that possesses any automated sales suppression device or zapper or phantom-ware for the sole purpose of developing hardware or software to combat the evasion of taxes by use of automated sales suppression devices or zappers or phantom-ware.

(c) For purposes of this section:

(1) “Automated sales suppression device” or “zapper” means a software program carried on a memory stick or removable compact disc, accessed through an Internet link, or accessed through any other means, that falsifies the electronic records of electronic cash registers and other point-of-sale systems, including, but not limited to, transaction data and transaction reports.

(2) “Electronic cash register” means a device that keeps a register or supporting documents through the means of an electronic device or computer system designed to record transaction data for the purpose of computing, compiling, or processing retail sales transaction data in whatever manner.

(3) “Phantom-ware” means a hidden, preinstalled, or installed at a later time programming option embedded in the operating system of an electronic cash register or hardwired into the electronic cash register that can be used to create a virtual second till or may eliminate or manipulate transaction records that may or may not be preserved in digital formats to represent the true or manipulated record of transactions in the electronic cash register.

(4) “Transaction data” includes information regarding items purchased by a customer, the price for each item, a taxability determination for each item, a segregated tax or fee amount for each of the items subject to the tax or fee, the amount of cash or credit tendered, the net amount returned to the customer in change, the date and time of the purchase, the name, address, and identification number of the vendor, and the receipt or invoice number of the transaction.

(d) This section shall not preclude prosecution under any other law.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2013

Governor